

§ 1024.1

10 CFR Ch. X (1–1–09 Edition)

§ 1024.1 Scope and purpose.

These procedures establish a process permitting recipients of financial assistance to appeal adverse final decisions made by financial assistance officers or contracting officers. The objective is to provide a timely, just, and inexpensive resolution of disputes involving grants, cooperative agreements, loan guarantees, loan agreements, or other financial assistance instruments.

§ 1024.2 Authority.

The authority of the Board derives from direct delegation of the Secretary to hear and decide finally for the Department appeals from any decision brought before it on disputes arising under financial assistance agreements.

§ 1024.3 General.

(a) A recipient or party to a grant, cooperative agreement, loan guarantee or agreement, or other such financial assistance may have a right to appeal disputes with the Department. Such a right may be set forth in statutes, in Departmental regulations dealing with the type of financial assistance involved, or in the agreement itself.

(b) Appeals are decided by the Financial Assistance Appeals Board in accordance with the procedures set forth in these regulations. Decisions will be by majority vote and will be the final disposition of the matter within the Department.

(1) The Board is located in the Washington, DC metropolitan area and its address is: Webb Building, room 1006, 4040 North Fairfax Drive, Arlington, Virginia 22203.

(2) The Administrative Judge assigned to hear and develop the record on an appeal has authority to act for the Board with respect to such appeal within the limits assigned and as set forth in these rules.

(c) In order that a right to appeal may be exercised in a timely manner, a financial assistance recipient must appeal, in writing, within 60 days after receipt of a “final decision” on the matter by a financial assistance or contracting officer.

(d) The appeal may take one of the following three alternative courses, depending on the amount of the claim

and degree of formality desired or needed:

(1) The first method is to proceed on the basis of a written record, without any oral presentations. It is the quickest and simplest process available to an appellant. All appeals involving less than \$10,000 will be decided on this basis, unless, on application made by the appellant, or the respondent, the Board rules otherwise. This method is also available for appeals where the amount in dispute is more than \$10,000 if an election is made in accordance with Rule 2. (See § 1024.4)

(2) A second method is to use a conference-type hearing in which the written record is supplemented with an informal oral presentation. It is the second fastest process available to an appellant and is conducted in a relatively informal manner which may require little, if any, testimony, and may even be conducted by a telephone conference call where deemed appropriate.

(3) The third method, and the most time consuming is the use of an adversary evidentiary hearing. Because of the procedural and logistical aspects involved, this method is more expensive and time consuming than the other two methods for both the appellant and respondent. Generally, this method is used only if there are complex facts in dispute.

(e) All three methods are designed to be as informal as possible; nevertheless, it should be recognized that the Board must have an adequate record on which to base a sound decision. While an orderly presentation of evidence is required, the Board attempts to be as flexible as possible in the interests of arriving at an impartial, inexpensive and expeditious resolution of the matter.

(f) The services of an attorney are not necessarily required, especially as to the first method. The appellant should note, however, that the respondent is represented by an attorney. Hearings, if held, are transcribed, and witnesses are required to present information or evidence at such hearings under oath. In each case, the Board shall issue a written decision unless

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otherwise requested by a party and the request is approved.

[45 FR 29764, May 5, 1980, as amended at 57 FR 56441, Nov. 30, 1992]

§ 1024.4 Rules of procedure.

The following rules of procedure shall govern all financial assistance disputes appealed to the Board in accordance with this subpart:

RULE

1. Filing of an appeal; acknowledgment.
2. Selection of an appeal method.
3. Development of the record.
4. Objections to evidence submitted.
5. Alternative methods of appeal.
6. Parties to the appeal.
7. Representation before the Board.
8. Dismissal for failure to meet deadlines and other requirements.
9. The Board's powers, functions, and responsibilities.
10. *Ex parte* communications (communications outside the record).
11. Notice and location of hearings.
12. Calculation of time periods.

RULE 1. FILING OF AN APPEAL; ACKNOWLEDGMENT

(a) A brief written notice of appeal, along with a copy of the final agency decision being appealed shall be submitted within 60 days after receipt of the decision. The notice must indicate that an appeal is intended, and must clearly state the issues in controversy, and the relief requested. This notice, if sufficiently detailed, may serve as the appellant's initial complaint. See Rule 3(a).

(b) The appeal notice shall be mailed or delivered to the financial Assistance Appeals Board (for address see §1024.3(b)(1)), with a copy to the official whose decision is being appealed, and a second copy to the General Counsel, Department of Energy, Washington DC 20585.

(c) upon receiving the appeal notice, the Board will promptly acknowledge receipt of the notice of appeal and will notify the parties of the date docketed.

RULE 2. SELECTION OF AN APPEAL METHOD

Unless submitted earlier, within 20 days after the appellant receives the Board's notice of docketing, the appellant must submit to the Board, with copy to respondent, a letter electing one of the three methods available for processing the appeal. For disputes involving less than \$10,000, method "1" (as set forth in Rule 5(a)) will automatically apply unless appellant specifically petitions and is granted the right to proceed under one of the other two methods. In exceptional circumstances, the respondent may likewise re-

quest the use of one of the other two methods. This election letter must identify the attorney or other person who will represent the appellant, if the notice of appeal did not already do so. (See Rule 7(a)). In case the parties disagree as to the appeal method to be used, the Board will finally decide.

RULE 3. DEVELOPMENT OF THE RECORD

(a) Appellant; complaint. (1) Within 30 days after receiving the docketing notice from the Board, the appellant shall:

- (i) Submit a complaint, or
- (ii) Submit a specific request (for approval by the Board), that the final decision as issued by the financial assistance officer or contracting officer, together with the notice of appeal, adequately describe the matter in dispute and will serve as the complaint.

(2) The complaint shall include: A copy of the decision appealed from; relevant portions of the applicable assistance agreements; a statement of the amount, if any, in dispute; and, if the appellant is proceeding under method 1 or 2, a copy of any documents supporting its claim. The documents must be organized chronologically and accompanied by an indexed list identifying each document by date, originator and addressee.

(3) To reduce the burden on the appellant, the appellant may specify, in an appropriate index, those relevant documents already in the possession of the respondent which the respondent will then add to those documents submitted in its answer.

(b) Respondent; answer. (1) Respondent shall submit an answer within 30 days after receipt of a complaint, or after receipt of a notice from the Board that the decision and notice of appeal shall serve as the complaint. The Board may enter a general denial on behalf of the respondent upon its failure to submit an answer within the time limitation.

(2) In its answer the respondent shall submit to the Board, with copy to appellant, two copies of any documents, other than those submitted by appellant in its complaint—which the respondent considers to be material. These should be organized and indexed as required under paragraph (a) of this rule and shall include those documents already in the possession of the Department and identified and requested by the appellant in accordance with paragraph (a) of this rule.

(c) The Board, on its own initiative, or in response to an appropriate request from a party to the dispute, may order a party to submit additional material wherever the Board considers it useful in resolving the dispute.

RULE 4. OBJECTIONS TO EVIDENCE SUBMITTED

(a) Any objection to a document or other evidence submitted in the complaint or answer shall be raised as early as possible. The